

Bench Handbook

FAIRNESS AND ACCESS

[REVISED 2010]



ADMINISTRATIVE OFFICE
OF THE COURTS

EDUCATION DIVISION/CENTER FOR
JUDICIAL EDUCATION AND RESEARCH

ABOUT CJER

The California Center for Judicial Education and Research (CJER), as the Education Division of the Administrative Office of the Courts, is responsible for developing and maintaining a comprehensive, high-quality educational program for the California judicial branch. Formed in 1973 as a joint enterprise of the Judicial Council and the California Judges Association, CJER supports the Chief Justice, the Judicial Council, and the courts by providing an extensive statewide educational program for judicial officers and court staff at both the trial and appellate levels. It includes orientation programs for new judicial officers, court clerks, and administrative officers; continuing education programs for judicial officers, court administrators, and managers; an annual statewide conference for judicial officers and court administrators; video and audiotapes; and judicial benchbooks, benchguides, and practice aids.

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INTRODUCTION

This handbook, in a question and answer format, covers two important aspects of the judicial system: (1) fairness and its attendant requirements, the appearance of fairness and the avoidance of bias; and (2) access to the courts. In the first three chapters, it discusses the various legal requirements that apply to judges and the court system and the successful judicial practices that have developed to support the goals of increased fairness. It also covers your obligations to ensure fairness and avoid the appearance of bias, and it discusses practices that can increase fairness and reduce the impact of biased behavior on the court system. It is not intended to be a substitute for participation in judicial education that addresses fairness issues, but rather a supplement to education programs and a handy reference if questions arise.

In Chapter 4, the handbook discusses access to the courts. It explains the various meanings of access. It details the requirements for providing accommodation to court participants with disabilities and language assistance to court participants whose native language is not English. And it suggests methods for improving access for the economically disadvantaged.

Finally, the handbook lists additional resources regarding access and fairness that have been prepared by the Judicial Council's Access and Fairness Advisory Committee and by the California Center for Judicial Education and Research.

Chapter 1

FAIRNESS

I. [§1.1] What Is Fairness?

II. What Are the Legal Requirements for Fairness?

- A. [§1.2] Code of Judicial Ethics
- B. [§1.3] Judicial Administration Standards
- C. [§1.4] Case Law

III. [§1.5] How Can You Check Yourself for Fairness?

IV. [§1.6] When Should You Recuse Yourself in a Case?

I. [§1.1] WHAT IS FAIRNESS?

Fair is defined in the dictionary as “free of favoritism or bias; impartial: a fair judge” and “just to all parties; equitable: a fair compromise.” Bias is defined as “preference or inclination that inhibits impartial judgment: prejudice.” Under these definitions, fairness and the lack of bias, which are key components of public trust, are closely associated with the judiciary and the court system in general. Everyone agrees that judges should be fair and free of bias, and in the vast majority of cases judges intend to be fair and believe that they *are* fair. But many fairness training sessions over the years have revealed unconscious biases that could affect the fairness of your decisions. And, what is equally important, these unconscious biases could affect the appearance of fairness.

II. WHAT ARE THE LEGAL REQUIREMENTS FOR FAIRNESS?

A. [§1.2] CODE OF JUDICIAL ETHICS

The first legal requirement for judges to be fair and avoid bias and prejudice is found in the California Code of Judicial Ethics (2008). The code specifically requires you to ensure fairness and prevent bias. It is available online at <http://www.courtinfo.ca.gov/rules/appendix/appdiv2.pdf>. You should consult it regularly because it provides an excellent guide to your day-to-day activities.

With respect to fairness and preventing bias, under the code you must

- Dispose of all judicial matters fairly, promptly, and efficiently. You must manage the courtroom in a manner that provides all

litigants the opportunity to have their matters fairly adjudicated in accordance with the law. [Cal Rules of Ct, Code of Judicial Ethics, Canon 3\(B\)\(8\)](#). [But, see the advisory committee commentary, which cautions that the obligation to dispose of matters promptly and efficiently must not take precedence over the obligation to dispose of matters fairly and with patience.]

- Perform your judicial duties without bias or prejudice. “A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice including but not limited to bias or prejudice based upon race, sex (more properly gender, but language of the canon hasn’t caught up), religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.” [Cal Rules of Ct, Code of Judicial Ethics, Canon 3\(B\)\(5\)](#).
- Require lawyers in proceedings before you to refrain from manifesting by words or conduct, bias or prejudice based on race, sex (gender), religion, national origin, disability, age, sexual orientation (including gender identity), or socioeconomic status against parties, witnesses, counsel, or others. This canon, however, does not preclude legitimate advocacy when one of these factors is an issue in the proceedings. [Cal Rules of Ct, Code of Judicial Ethics, Canon 3\(B\)\(6\)](#).
- Require staff and court personnel under your direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based on race, sex (gender), religion, national origin, disability, age, sexual orientation (gender identity), or socioeconomic status in the performance of their official duties. [Cal Rules of Ct, Code of Judicial Ethics, Canon 3\(C\)\(2\)](#).

Thus, under the Code of Judicial Ethics you are responsible in the courtroom not only for your own behavior, but also for the behavior of your staff and the lawyers appearing before you.

In addition, the code requires you to uphold these standards outside the courtroom: Your behavior must ensure the appearance of fairness and impartiality. Thus, a “judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation,” although exceptions are made for religious and military organizations. And nonprofit youth organizations where membership does not violate [Cal Rules of Ct, Code of Judicial Ethics, Canon 4A](#) (judge must not engage in extrajudicial activities that cast doubt on the judge’s impartiality, demean the office, or interfere with performance of judicial duties) are exempt. [Cal Rules of Ct, Code of Judicial Ethics, Canon 2\(C\)](#). The rationale for barring a judge’s membership in organizations that practice discrimination is that such

membership may give rise to a perception that the judge's impartiality is impaired. Additionally, a judge's membership in an organization that engages in *any* discriminatory membership practices prohibited by law also violates [Cal Rules of Ct, Code of Judicial Ethics, Canon 2](#) and gives the appearance of impropriety. Finally, a judge's public manifestation of knowing approval of invidious discrimination on any basis gives the appearance of impropriety under [Cal Rules of Ct, Code of Judicial Ethics, Canon 2](#) and diminishes public confidence in the integrity and impartiality of the judiciary.

B. [§1.3] JUDICIAL ADMINISTRATION STANDARDS

The second source of authority intended to increase fairness, limit bias, and preserve the integrity and impartiality of the judicial system is the judicial administration standards adopted by the Judicial Council. These standards provide guidance for judicial conduct, although they do not have the force of law.

The standards recommend that you should

- Ensure that courtroom proceedings are conducted in a manner that is fair and impartial to all the participants. [Cal Rules of Ct, Standards J Admin 10.20\(a\)\(1\)](#). In conducting trials, judges should be exceedingly discreet in what they say and do in the presence of a jury lest they seem to lean toward or lend their influence to one side or the other. Their conduct must be in accord with recognized principles of judicial decorum consistent with the presentation of a case in an atmosphere of fairness and impartiality so that the trial is not only fair in fact, it must also appear to be fair. *Haluck v Ricoh Electronics, Inc.* (2007) 151 CA4th 994, 1002, 60 CR3d 542.
- Refrain, in all courtroom proceedings, from engaging in conduct and prohibit others from engaging in conduct that shows bias, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants. [Cal Rules of Ct, Standards J Admin 10.20\(a\)\(2\)](#).
- Ensure that all orders, rulings, and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests, and are not influenced by stereotypes or biases. [Cal Rules of Ct, Standards J Admin 10.20\(a\)\(3\)](#).

Each court should use gender-neutral language in all local rules, forms, and court documents, and should provide for periodic review to ensure the continued use of gender-neutral language. [Cal Rules of Ct 10.612](#).

C. [§1.4] CASE LAW

Perceived bias on the part of judicial officers has occasionally been the basis for reversal:

- In an employment discrimination case, the trial judge's actions in allowing and indeed helping to create a circus atmosphere and in giving defendants' lawyer free rein to deride and make snide remarks at will at the expense of plaintiffs and their lawyer, constituted judicial misconduct and required reversal. See *Haluck v Ricoh Electronics, Inc.* (2007) 151 CA4th 994, 1008, 60 CR3d 542. When the appearance of judicial bias and unfairness colors the entire record, the appellant need not follow the general requirement of making an affirmative showing of prejudice. *Haluck v Ricoh Electronics, Inc.*, *supra*. The test is not whether appellant has proved harm, but whether the court's comments would cause a reasonable person to doubt the impartiality of the judge or would cause the appellate court to lack confidence in the fairness of the proceedings to such an extent as would require reversal. *Haluck v Ricoh Electronics, Inc.*, *supra*.
- In a medical malpractice case in which the plaintiff was an undocumented alien, the trial judge recited a veritable litany that condemned and impugned the character of undocumented immigrants, including plaintiff, who places a burden upon the taxpayers by obtaining educational, medical, housing, and other services in order to make "a pot of undeserved money." See *Hernandez v Paicius* (2003) 109 CA4th 452, 134 CR2d 756. The court of appeal had no difficulty concluding that the average person could well entertain doubt as to whether the trial judge was impartial. That being the case, the reviewing court was not required to speculate whether the bias was actual or merely apparent, or whether the result would have been the same if the evidence had been impartially considered and the matter dispassionately decided; instead it reversed the judgment and remanded the matter to a different judge for a new trial on all issues. 109 CA4th at 455, 461.
- In a parole revocation case, the appellate court ordered a different judge to handle the retrial because the judge at the hearing expressed unabashed animosity toward Proposition 36 that requires probation for certain drug violations, and particularly toward those defendants—like the subject of the revocation hearing—who are unable to complete Proposition 36 probation without a violation. *People v Enriquez* (2008) 160 CA4th 230, 244, 72 CR3d 718.

- In a malicious prosecution case against an attorney, the trial court judge consistently expressed negative opinions about attorneys, which gave the appearance of bias and required reversal. “Judicial behavior inimical to that necessary perception [that a fair hearing was had] can never be countenanced and may well provide a basis for reversal even if not the product of gender bias.” *Hall v Harker* (1999) 69 CA4th 836, 843, 82 CR2d 44, disapproved on other grounds by *Casa Herrera, Inc. v Beydoun* (2004) 32 C4th 336, 346, 9 CR3d 97.
- In a sexual harassment case, the trial judge treated the female plaintiff differently than the other witnesses, using a “fatherly tone” that was “either courtly and patronizing or harsh and reprimanding.” This created the appearance of gender bias. Because of this appearance of bias, the case was reversed on appeal. See *Catchpole v Brannon* (1995) 36 CA4th 237, 251, 42 CR2d 440.
- In a marital dissolution case, the judge’s statement that the wife was a “lovely girl” showed gender bias, which denied the wife a fair trial and required reversal of the judgment on appeal. See *Marriage of Iverson* (1992) 11 CA4th 1495, 1499–1500, 15 CR2d 70.
- In an adoption proceeding, bias was found based on the judge’s stated belief that hearing-impaired persons were not qualified to be adoptive parents. See *Adoption of Richardson* (1967) 251 CA2d 222, 236, 59 CR 323.

III. [§1.5] HOW CAN YOU CHECK YOURSELF FOR FAIRNESS?

Asking the question is a first step to increasing your own fairness and reducing bias. The second step is to participate regularly in judicial education that addresses fairness issues.

Numerous education sessions have shown that everyone has unconscious biases. A fairness education goal is to help participants become aware of those biases and learn not to act on them to the detriment of the judicial process. Awareness alone may be enough to help prevent you from displaying an unconscious bias in a proceeding, which could impair the fairness of the proceeding and bring the judiciary into disrepute. Although again not a substitute for participation in education sessions, there are various, common-sense techniques that you can use to recognize and identify your unconscious biases.

First, simply consider the possibility that unconscious biases are affecting your decision making. Unconscious biases may arise when your beliefs, feelings, attitudes, speech, or actions are influenced not only by

your perception of another person's words and actions but also by that person's race, national origin, religion, gender, sexual orientation, gender identity, age, or disability.

Second, review your own conduct for evidence of bias. Possible indicators include your tone of voice, posture, and gestures, and the forms of address that you tend to use with persons whom you perceive as belonging to certain categories or groups, *e.g.*, persons of a certain sex, race, national origin, religion, sexual orientation, or gender identity. Techniques for self-examination include

- Asking the jurors at the end of the trial to complete an anonymous exit questionnaire on various aspects of the proceedings, including how fair you and the court staff were.
- Reviewing a sampling of your past orders and rulings to look for a pattern that may indicate that it could have been based on a bias.
- Reviewing a sampling of transcripts or tape recordings of your past trials, to spot such indicators of bias as the use of ethnic expressions, or the use of particular forms of address when speaking to members of certain groups.

Finally, be careful that you do not show disapproval or impatience that may be misconstrued as bias. Remember that body language can be as impactful as words in expressing disapproval or impatience. Facial expression, body language, and oral communication can create the appearance of judicial bias to the litigants or the lawyers in the proceeding, to the jurors, to the media, and to other court observers.

If you are aware of your own behavior and mannerisms, you can more easily avoid behavior that could be perceived as prejudicial. Research has shown that jurors often take their “cues” for their attitudes toward litigants, attorneys, and witnesses, from the judge's conduct and demeanor, including nonverbal behavior. In addition, conduct that one believes is not biased or does not convey stereotyping, can nevertheless give the impression of favoring or disfavoring one litigant, attorney, or witness over another, and thereby affect an individual's credibility. This conduct may include anger, impatience, sarcasm, and the inappropriate use of humor.

IV. [§1.6] WHEN SHOULD YOU RECUSE YOURSELF IN A CASE?

You must recuse yourself if

- You believe your recusal would further the interests of justice (CCP §170.1(a)(6)(A)(i)),
- You have substantial doubt about being able to be impartial (CCP §170.1(a)(6)(A)(ii)), or

- A person who is aware of the facts might reasonably entertain a doubt about your impartiality ([CCP §170.1\(a\)\(6\)\(A\)\(iii\)](#); [Cal Code Jud Ethics, Canon 3\(E\)\(2\)](#)).

Chapter 2

BIAS IN THE COURTS

- I. **[§2.1] What Is The Effect of Biased Behavior In the Courts?**
- II. **[§2.2] How Does Biased Behavior Manifest in the Courts?**
- III. **[§2.3] What Can Judges Do To Eliminate Bias in the Courts?**

I. **[§2.1] WHAT IS THE EFFECT OF BIASED BEHAVIOR IN THE COURTS?**

Words, actions, and behaviors that indicate bias may diminish public trust and violate the following two fundamental principles of our justice system, that: (1) our courts are free of bias, and (2) equal access to fair and dignified treatment in our courts awaits all who enter them. Public trust and confidence in our legal system is grounded in the practice and perception of fairness and equality in our courts. One strong indicator of that is how the people who work in the courts conduct themselves when interacting with the public.

Everyone entering the court must be given equal treatment regardless of gender, racial or ethnic background, disability, sexual orientation, age, or ability to speak English. Judicial officers and other court personnel should be careful not to make assumptions about people's roles in the courts based on these factors.

II. **[§2.2] HOW DOES BIASED BEHAVIOR MANIFEST IN THE COURTS?**

Biased behavior is sometimes so ingrained that it is difficult to recognize. One type of biased behavior is conduct that overtly communicates stereotyping. This conduct, which on a conscious level all would find offensive, may sometimes be present on an unconscious level. This bias can be manifested by, for example

- Assuming that a woman, or a person of Hispanic, Asian, or African descent, is not a judge, attorney, or officer of the court; or
- Speaking more slowly to a person whose primary language is other than English but who may have been born in this country.

Biases are also exhibited through mistaken conclusions drawn by judges, court employees, or users, because of ignorance of variation in behavioral norms across all cultures, for example, by

- Assuming that a nod or a “yes” indicates thorough understanding; or
- Assuming that someone is lying if he or she does not make eye contact. In many cultures, making eye contact with someone in a position of authority is considered disrespectful.

Yet another way in which biased behavior may be shown is through habitual behavior that reflects conscious or unconscious bias, for example, by

- Addressing majority lawyers by formal title such as counsel, but minority lawyers by informal reference such as by their first name; or
- Permitting majority lawyers or litigants to fully argue their point or tell their story, but continually interrupting lawyers or litigants of color and women. Referring to women by terms such as “honey” or “dear” or commenting on their appearance.

III. [§2.3] WHAT CAN JUDGES DO TO ELIMINATE BIAS IN THE COURTS?

You can be a role model. And you can help each member of the court staff eliminate bias by ensuring that all staff

- Treat everyone with courtesy and respect. For example, individuals should be addressed by appropriate title, such as “Judge” or “Your Honor,” “Counselor” or “Attorney,” “Mr.” or “Ms.” (unless “Miss” or “Mrs.” is requested), “Dr.,” “Officer,” “Representative,” or “Senator.” Groups should be addressed with gender-neutral or gender-inclusive terms, such as “members of the jury,” “counselors,” or “ladies and gentlemen.”
- Act neither in an overly friendly nor unfriendly manner to individuals in the courtroom or in the clerk’s office.
- Permit all parties and attorneys an equal opportunity to present their cases, without exhibiting impatient or disinterest.
- Are polite on the telephone.
- Maintain decorum in the courtroom when court is not in session. Bailiffs and clerks should avoid having personal conversations and telling jokes with attorneys and witnesses.
- Attend fairness training, including ethics training.

Chapter 3

AVOIDING BIAS

- I. **[§3.1] How Can You Avoid Bias Toward Specific Court Participants?**
- II. **[§3.2] How Can You Avoid Gender Bias?**
- III. **[§3.3] How Can You Avoid Sexual Orientation Bias?**

I. **[§3.1] HOW CAN YOU AVOID BIAS TOWARD SPECIFIC COURT PARTICIPANTS?**

The following suggestions may seem obvious, and in many respects they are. And again it cannot be overemphasized that these suggestions are not a substitute for participation in fairness education. But if you think of them simply as a reminder, they may help you identify areas that you can improve on or areas, through your own observation, on which colleagues may improve.

Note: Much of the gender discussion below assumes a male judge interacting with female court participants. Historically, there simply was a higher incidence of these relationships, and, although now diminished, that difference continues to this day when one reviews annual reports of the Commission on Judicial Performance and legal newspaper reports of complaints against judicial officers. But obviously, both male and female judicial officers should avoid acting in any way that would show favoritism toward or bias against either male or female court participants:

- *Litigants*: An obvious reminder is that the claims of litigants who are women, or members of a racial minority, or those who have a limited ability to speak English are as legitimate as any other claims heard in court and must be treated accordingly. Some judicial officers, both male and female, have been dismissive of female litigants as being emotional. This dismissive attitude must be avoided. And just as you should be careful not to label female litigants as more emotional either because of an unwarranted assumption or because of the nature of the cases often brought by women, such as child-support enforcement, you must also avoid showing favoritism toward or bias against male litigants in family law cases.
- *Victims*: Take special care to treat all victims of crime with respect and be sensitive to the trauma they have experienced. Victims of domestic violence and sexual assault should not be subject to increased scrutiny or be stereotyped because the alleged crime is

sexual in nature or occurred in a domestic context. Likewise, victims are no less credible because they are of a minority race or have different cultural backgrounds or limited ability to speak English. Testimony of female and minority victims must be judged by the same standards of relevance and credibility as the testimony of other victims.

- *Attorneys*: Good attorneys are zealous advocates. This, of course, includes women and minority attorneys. It is a danger sign if you or colleagues expect them to be more passive in their advocacy or more tolerant of interruptions or reprimands. Another obvious point is to recognize and respond to women and minority attorneys to the same extent and in the same manner as you would recognize and respond to other members of the bar. For example, it is inappropriate to address a female attorney as “young lady” or to identify a minority attorney as “that black attorney” or “that Hispanic attorney.”
- *Witnesses*: Judge the credibility of witnesses on consistent standards and not on the basis of race, gender, or language ability. You, the attorneys, and court personnel should make every effort to correctly and respectfully pronounce each party’s name. If an attorney has a client or a witness whose name you or others in the courtroom find difficult to pronounce, you should encourage the attorney to help the court by informing you and the staff at or before the calendar call of the correct pronunciation. You may ask the attorney to write out the name phonetically. In this way, the client or the witness will not be embarrassed.
- *Expert Witnesses*: Judge expert witnesses on the basis of their qualifications and the substance of their testimony and not on their gender, race, or language ability. Thus, the test for competence should be applied equally.

II. [§3.2] HOW CAN YOU AVOID GENDER BIAS?

Numerous studies have documented examples of gender bias in the courts, including the 1996 report of the Judicial Council’s Advisory Committee on Gender Bias in the Courts, entitled *Achieving Equal Justice for Women and Men in the Courts*. Current legal news reports and summary reports of actions of the Commission on Judicial Performance suggest this continues to be an issue in the courts.

A first step to help you avoid gender bias is to participate regularly in judicial education programs that address fairness issues. A second step is to use the following examples of the conduct documented by the committee that exhibited gender bias or the appearance of gender bias as a reminder of what to avoid:

- Openly hostile behavior to female participants in the courtroom;
- Sexual innuendo or dirty jokes;
- Use of terms of endearment to refer to female participants in the courtroom;
- Failure to extend equally common courtesies to female and transgender participants, such as appropriate forms of address;
- Undue attention to the personal appearance of female and transgender court participants;
- Reliance on stereotypes about women rather than on judgments unique to each individual;
- Adoption of a tone by a male judicial officer toward female participants that is fatherly, courtly, and patronizing, or harsh and reprimanding;
- Imposition of unequal standards of advocacy;
- Hostility and impatience toward causes of action usually involving women, such as sexual discrimination or harassment;
- Imposition of such penalties as denying continuances of trials or depositions on female participants who are pregnant, when similar penalties would not have been imposed for other disabling conditions; and
- Failure to intervene appropriately when conduct constituting gender (including transgender) bias is exhibited by some other court participant under the judge's control, such as counsel, a bailiff, or a court clerk.

III. [§3.3] HOW CAN YOU AVOID SEXUAL ORIENTATION AND SEXUAL IDENTITY BIAS?

State law acknowledges relationships formed by same-sex couples (see [The Domestic Partners Rights and Responsibility Act of 2003](#), [Fam C §§297–298.5](#); [Fam C §297.5](#) (registered domestic partners have same right and responsibilities as spouses); [Prob C §37\(b\)](#) (surviving domestic partner defined); and [CC §1714.01](#) (right of domestic partner to recover damages for negligent infliction of emotional distress in the same way as a spouse)), but past neglect and prejudice still lead many gay, lesbian, and transgender court participants (including judicial officers, attorneys, jurors, court staff or parties) to expect that the judicial system is composed mainly of individuals who lack respect for or harbor hostility toward their respective communities. In addition, many judges lack knowledge of and exposure to gay, lesbian, and transgender individuals, which may prevent them from developing strategies that reflect respect and inclusiveness in the courtroom. A report of the subcommittee of the Access and Fairness

Advisory Committee on Sexual Orientation Fairness based on focus groups in San Jose, San Francisco, San Diego, Sacramento, and Los Angeles identified the following issues in this area:

- Sexual orientation bias influencing judicial decision making;
- Lack of knowledge and understanding of sexual orientation issues and nuances;
- Need for preservation of privacy;
- Disrespect and mistreatment because of sexual orientation bias and homophobia;
- Exclusion from informal legal system networks;
- Lack of equal employment opportunities and benefits for attorneys and court personnel; and
- Barriers to court accessibility, including lack of substantive law that addresses gay and lesbian relationship issues and language in current court forms that does not reflect the relationship status of gay and lesbian litigants.

Although the Judicial Council study on sexual orientation fairness in the California courts did not address transgender litigants, you should use a similar approach to those enumerated below to provide fair treatment and eliminate bias with respect to these court users. Further, you should be attentive to the behavior and demeanor of your court staff to ensure that LGBT court users are being treated with dignity and respect.

What can you do to counteract the potential for bias with respect to sexual orientation and gender identity? First, consider participating in judicial education that addresses fairness issues to help recognize the myths and stereotypes that you may hold, and identify any unconscious bias you may hold. Second, on your own you can try to

- Identify and recognize common myths, stereotypes, and biases about lesbians, gay, and transgender individuals;
- Identify ethical and legal obligations regarding fairness based on sexual orientation and gender identity.
- Identify ways to ensure sexual orientation and gender identity fairness in judicial conduct and decision making.
- Develop jury selection techniques for encouraging candid responses about potential biases, both positive and negative.
- Frame effective voir dire questions while respecting the privacy of lesbians, gay, and transgender individuals in the jury selection process. For example, in a case involving a lesbian, gay, or a transgender party, you might ask:

- Is there anything in the statement of the case that makes you uncomfortable?
- This case involves _____. Do you think you could be fair to _____? Why or why not?
- Can you describe your interaction/experience with gay, lesbian, or transgender individuals?
- Do you have friends, relatives, or co-workers who are gay, lesbian, or transgender? If yes, when you found out, how did it affect your relationship, if at all?
- What do you think about allowing gays and lesbians to serve in the military? Why do you think some people oppose it?
- Are you a member of a religious or other organization that takes a position against homosexuality?

Open-ended, follow-up questions might include:

- Why do you feel that way?
- How do you feel about that?
- What makes you say that?
- Why do you think that happened?
- Why do you feel that happens very rarely?
- Would you tell me some more about that?
- Say some more please (why is that)?
- What personal experiences are you drawing on when you say that?

Chapter 4

ACCESS

- I. **[§4.1] What Does Access to the Courts Mean?**
- II. **What Are the Requirements for Providing Access to Persons With Disabilities?**
 - A. **[§4.2] What Is the ADA?**
 - B. **[§4.3] What Conduct Is Prohibited Under the ADA?**
 - C. **[§4.4] Does the ADA Override More Strict State or Local Laws?**
 - D. **[§4.5] What Notice Is Required?**
 - E. **[§4.6] Where Can You Find More Information?**
- III. **[§4.7] What Rule of Court Applies to Requests for Accommodation?**
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 - 6. [§4.29] What Must Be Shown in Docket or Minute Order When Certified Interpreter Is Appointed?
- B. [§4.30] What Requirements Must Interpreters Meet?
- C. [§4.31] Should You Authorize a Preappearance Interview With an Interpreter?
- D. [§4.32] What Instructions Should You Give the Interpreter, Attorneys, and Witness?
- E. [§4.33] How Can You Examine Jurors for Possible Language Bias?

IX. [§4.34] What Is Needed To Provide Access to the Economically Disadvantaged?

I. [§4.1] WHAT DOES ACCESS TO THE COURTS MEAN?

“One of the goals of our legal system is to secure access to our courts for everyone.” *Hoverstein v Superior Court* (1999) 74 CA4th 636, 641, 88 CR2d 197, citing *Boddie v Connecticut* (1971) 401 US 371, 374, 91 S Ct 780, 784, 23 L Ed 2d 113; see also *Tennessee v Lane* (2004) 541 US 509, 124 S Ct 1978, 158 L Ed 2d 820.

Access to the courts and access to justice are not limited to physical access to a courtroom building, but includes physical access to other areas as well as to court programs and services. In his State of the Judiciary address to a joint session of the Legislature on March 28, 2000, Chief Justice Ronald George discussed some of the access-to-justice issues confronting the judiciary. He noted that

As the judicial system uses . . . new tools to reorganize and streamline its operations, our constant focus remains on the service we provide to the public, and specifically on fulfilling our long-standing

primary goal of *improving access to justice* in a multitude of ways.
[Emphasis added.]

The Chief Justice discussed five specific access issues:

Language Assistance. The Chief Justice emphasized that competent court interpreters are vital to ensuring fair proceedings, because physical presence in a courthouse is of no use if parties and witnesses cannot understand what is expected of them or cannot understand the courtroom proceedings in which they are involved. He noted the need for more certified interpreters and for additional funds to increase the rate of compensation for interpreters to ensure access to a court certified or court registered interpreter for all who need one.

Physical Access. The Chief Justice discussed the fact that for those with disabilities, physical barriers can make access to the courthouse impossible. He requested funding to address urgent facility needs such as Americans With Disabilities Act (ADA) compliance, jury facilities, and child victim waiting areas. He noted that the Task Force on Court Facilities is developing standards for ADA compliance for all future courthouse construction and remodeling.

Self-Help Programs. The Chief Justice discussed the need to provide legal services to those who cannot afford to retain their own counsel. He noted that many courts have been working closely with local bar associations and legal services organizations to provide legal assistance to low- and middle-income individuals. He also noted the establishment of the \$10 million Equal Access Fund, which is administered by the State Bar Legal Services Trust Fund Commission in conjunction with the Judicial Council. Nine million dollars of the fund is being used to support the efforts of legal services organizations that serve low-income individuals. One million dollars is being used to establish self-help programs in conjunction with local courts. Experimental projects in domestic violence, family law, landlord-tenant disputes, and general civil litigation are creating models that can be used in courts throughout the state. These programs are being coordinated with family law facilitators in each superior court to help with child support collection.

Litigation/Mediation/Collaboration. The Chief Justice emphasized that courts have an obligation to implement appropriate procedures and effective alternatives to meet, in a timely and efficient way, the needs of those who seek their assistance. He referred to the pilot projects in Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara Counties for streamlining the handling of complex litigation. He also referred to the pilot projects in Fresno and San Diego Counties on the use of mandatory mediation in specified civil cases, and the pilot projects in Contra Costa and Sonoma Counties on the use of voluntary mediation programs. Finally, he noted the increasing use of collaborative courts to

deal specifically with drug and domestic violence offenders. These expanded court proceedings typically include close and continuing judicial supervision, cooperation with local treatment providers, and individualized requirements that the defendant must meet in order to succeed, often including seeking and maintaining employment.

Technological Access. Finally, the Chief Justice noted that technological innovations have made access to information about the judicial system more readily available to litigants, their counsel, and the public in general. The Judicial Council Web site contains information about the judicial system and offers immediate Internet access to appellate decisions. Standards are being developed to enable courts to more effectively share data with the entire justice system, the public, and the legislative and executive branches.

In conclusion, the Chief Justice stated that a strong and independent judiciary is committed to “listening to the public it serves,” and “actively seeking the resources it needs in order to provide the best service possible.”

II. WHAT ARE THE REQUIREMENTS FOR PROVIDING ACCESS TO PERSONS WITH DISABILITIES?

A. [§4.2] WHAT IS THE ADA?

The Americans With Disabilities Act (ADA) ([42 USC §12101 et seq](#)) is a federal civil rights statute that requires all state and local governmental entities, including the courts (see [42 USC §12131](#)), to accommodate the needs of persons with disabilities who have an interest in court activities, programs, and services. The ADA also requires the government to modify programs to integrate persons with disabilities, eliminate discriminatory practices or procedures, and provide alternatives to communications limitations and differences. It specifically provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” [42 USC §12132](#).

The ADA is based on congressional findings that

- In 1990, approximately 43 million Americans were disabled;
- Historically, these individuals have been isolated;
- They continually encounter discrimination; and
- They are frequently subjected to unequal treatment, which, in many instances, is intentional.

B. [§4.3] WHAT CONDUCT IS PROHIBITED UNDER THE ADA?

Under the ADA the following conduct is prohibited (28 CFR §35.130(a)–(b)):

- Directly or indirectly excluding persons with disabilities.
- Providing less effective benefits or services to persons with disabilities than to persons without disabilities.
- Providing a separate benefit or service from that provided to the general public, except when absolutely necessary.
- Aiding or perpetuating discrimination by acts or omissions.
- Employing procedures, practices, or rules that screen out disabled persons.
- Using sites or locations where disabled persons cannot receive the benefit, service, or activity.
- Surcharging disabled persons for a service, benefit, or activity.
- Forcing a disabled person to accept a particular accommodation.
- Coercing or retaliating against anyone seeking to enforce the ADA.

C. [§4.4] DOES THE ADA OVERRIDE MORE STRICT STATE OR LOCAL LAWS?

Neither the ADA nor the implementing regulations that apply to public entities supplant state or local laws that provide equal or greater protections to a person with a disability. 28 CFR §35.103(b). For example, California has a broader definition of disability than the ADA that must be applied in California. See Govt C §12926.1(c). See the discussion at §4.9.

D. [§4.5] WHAT NOTICE IS REQUIRED?

Courts should provide notice to the public about where to find the court's ADA coordinator or how to obtain communication assistance, as follows:

- Courts with 50 or more employees must appoint an employee to be the ADA coordinator for the court. 28 CFR §35.107(a).
- A court should post notices on where to find the ADA coordinator or otherwise obtain assistance. 28 CFR §35.106.
- A court and its employees have an obligation to provide effective communication regardless of the nature of the communication disability. See 28 CFR §35.160.
- An applicant for assistance may not be charged for the accommodation. 28 CFR §35.130(f)–(g).

E. [§4.6] WHERE CAN YOU FIND MORE INFORMATION?

The full text of the ADA is available at <http://www.usdoj.gov/crt/ada/statute.html>. The ADA homepage (a part of the U.S. Department of Justice site) is located at <http://www.usdoj.gov/crt/ada/adahom1.htm>. The American Bar Association also has various resources available on procedures for court compliance with the requirements of the ADA. These resources are available by calling the ABA Commission on [Mental and Physical Disability Law](#) at 202-662-1570 or 202-662-1032 (TDD). Finally, the Department of Fair Employment and Housing Web site may be helpful: <http://www.dfeh.ca.gov>.

III. [§4.7] WHAT RULE OF COURT APPLIES TO REQUESTS FOR ACCOMMODATION?

[California Rules of Court 1.100](#) was adopted to ensure compliance with the ADA and state laws. The rule provides a procedure for attorneys, parties, witnesses, jurors, and any other persons with disabilities to request an accommodation in confidence and to make it directly to a designated court clerk, employee, or judicial officer. It is the “policy of the courts of this state to assure that qualified individuals with disabilities have equal and full access to the judicial system,” but the rule is not intended to impose limitations or to invalidate the remedies, rights, and procedures accorded to persons with disabilities under state or federal law. [Cal Rules of Ct 1.100\(b\)](#).

A. [§4.8] WHO IS ENTITLED TO RECEIVE ACCOMMODATION?

Persons with disabilities are protected by ([Cal Rules of Ct 1.100\(a\)\(1\)](#)):

- The ADA,
- The Unruh Civil Rights Act (CC §51 et seq; see Govt C §§12926, 12926.1 (definition of disability)), and
- Other related state and federal laws.

The definition of “persons with disabilities” includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such an impairment, or are regarded as having such an impairment. [Cal Rules of Ct 1.100\(a\)\(1\)](#).

Under the ADA:

- A “qualified individual with a disability” is an individual with a disability who, with or without modifications to rules, practices, or removal of physical, communication, or other barriers, meets the eligibility requirements for the receipt of services or participation in programs provided by the government entity. See [42 USC](#)

§12131(2). But see §4.9 for discussion of broader California definition of person with disability who is entitled to accommodation.

- No qualified person may be excluded from services or participation in programs provided by the courts. Qualified persons are entitled to full participation. See 42 USC §12132.

B. [§4.9] IS THERE A DIFFERENCE IN HOW DISABILITY IS DEFINED UNDER CALIFORNIA LAW AND THE ADA?

For ADA purposes, disability is defined as a physical or mental impairment that substantially limits one or more major life activities. 42 USC §12102(2); 28 CFR §35.104; CC §54(b)(1). But for California purposes, the test for disability is broader in that only a limitation on major life activities is required rather than the more strict ADA test of *substantial* limitation. Govt C §12926.1(c); Cal Rules of Ct 1.100(a)(1).

. The federal regulations identify major life activities as the following (28 CFR §35.104):

- Caring for oneself,
- Performing manual tasks,
- Walking,
- Seeing,
- Hearing
- Speaking,
- Learning, and
- Working

Examples of impairments that substantially limit one or more major life activities include

- Mobility or other motor impairments;
- Psychological and mental illness;
- Vision, hearing, or speech impairments;
- Cognitive impairment;
- Environmental sensitivities; and
- Serious illness.

Major life activities are broadly defined for California purposes to include working and physical, mental, and social activities. Govt C §12926(k)(1)(B)(iii).

A person who is an alcoholic or a recovering alcoholic is an individual with a disability under the ADA and California law. Both exclude certain conditions from coverage. For example, California excludes sexual

behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs as disabilities. [Govt C §12926\(k\)\(6\)](#).

Similarly, under the ADA, active users of illegal drugs are not covered. See [42 USC §12114](#). Other conditions excluded under the ADA, include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, compulsive gambling, kleptomania, pyromania, and homosexuality. See [28 CFR §35.104](#).

TIP: For court purposes, the broader California definition is to be applied. [Govt C §12926.1\(a\),\(c\)](#). Thus, any person with a disability, regardless of the severity or nature of the limitation, is a “person with a disability.” You should also note that California law specifically states that if the ADA would provide broader coverage or include a physical or mental disability not covered under state law, the ADA definition applies. [Govt C §12926\(l\)](#).

C. **[§4.10] WHAT IS THE PROCESS FOR REQUESTING AN ACCOMMODATION?**

An application for accommodation may be presented ex parte on Judicial Council Form MC-410, in another written format, or orally. [Cal Rules of Ct 1.100\(c\)\(1\)](#). Applications must be forwarded to the ADA coordinator, access coordinator, or designee. [Cal Rules of Ct 1.100\(c\)\(1\)](#). “Applicant” means any lawyer, party, witness, juror, or other person with an interest in attending any proceeding before any court of this state. [Cal Rules of Ct 1.100\(a\)\(2\)](#).

The application should be made as far as possible before the requested implementation date for the accommodation as possible and, in any event, should be made at least five court days before that date. However, you may, in your discretion, waive this requirement. [Cal Rules of Ct 1.100\(c\)\(3\)](#). To manage the accommodation process effectively and efficiently in some situations, you will need advance notice to implement the accommodation. Some accommodations require the court to reserve additional personnel or devices. You may readily provide other accommodations with practically little notice, *e.g.*, supplying assistive listening devices, changing heat or air conditioning settings, or increasing the volume of the public address system.

Each application for accommodation must include a description of the accommodation that is sought and a statement of the impairment that necessitates the accommodation. [Cal Rules of Ct 1.100\(c\)\(2\)](#). You have

the discretion to require an applicant to provide additional information about the qualifying impairment. [Cal Rules of Ct 1.100\(c\)\(2\)](#).

The rule does not require a specified showing of disability. The federal statutes and regulations also do not specify the nature of the showing needed to confirm the existence of a disabling condition requiring an accommodation. The court employee reviewing an accommodation request may have questions about the designated impairment or the appropriateness of the requested accommodation. In these instances, you may ask the applicant to provide additional information about the disabling condition or the effectiveness of the requested accommodation. You and your court personnel should be careful, however, not to place an undue burden of proof on an applicant because doing so might constitute discrimination based on disability. Information about the qualifying impairment might include a doctor's letter, a document from a public agency (*e.g.*, the Social Security Administration or the Department of Veterans Affairs), or other verification you might consider to be reliable (*e.g.*, corroboration by a friend, spouse, or other person who knows or has observed the applicant). But see the discussion of confidentiality at §4.11.

D. [§4.11] IS THERE A RULE OF CONFIDENTIALITY?

The identity of the applicant in all oral or written communications to the court, and all information, files and documents the applicant submits as part of the application process, are confidential. [Cal Rules of Ct 1.100\(c\)\(4\)](#). You should follow the same procedures that your court normally uses with respect to confidential information. Documents relating solely to a request for accommodation should be maintained in a sealed envelope with the case file or kept in a separate secured confidential filing cabinet.

E. [§4.12] IS A HEARING REQUIRED?

The rule does not require an evidentiary hearing on a request for accommodation. The procedure is *ex parte* and purely administrative and is not an adversarial process. Although the accommodation requested may affect the parties or other participants in the proceedings (*e.g.*, trial to be held on alternate days or during different hours), they are not involved in the request or consideration of an accommodation. The discussion concerning accommodation should not be held in open court unless the applicant consents in writing. See [Cal Rules of Ct 1.100\(c\)\(4\)](#).

You must inform the applicant in writing—and, as may be appropriate, in an alternative format—that the request is granted or denied. You must respond to the applicant. The failure to rule on a request for an accommodation of the applicant's disability is structural error requiring reversal. *Biscaro v Stern* (2010) 181 CA4th 702, 104 CR3d 817. But see discussion in §4.14 on whether a hearing is available if a request is denied.

F. [§4.13] ARE THERE ANY PRACTICAL TIPS FOR ADDRESSING ACCOMMODATION REQUESTS?

The following are some practical tips for addressing accommodation requests:

- Do not regard a request for accommodation as a request for special privilege or special treatment. An accommodation of any particular type is what a person with a disability needs to function in a world designed for nondisabled persons.
- Do not assume that a person with a disability is going to request a greater, more complex, or more expensive accommodation than he or she needs. Many individuals with disabilities are very aware of the problem of scarce resources because many of them live without sufficient resources on a day-to-day basis. Most persons with disabilities are sensitive to asking for too much. Nevertheless, there will be people who will attempt to exaggerate their needs and who will attempt to abuse the system. Be intuitive and sensitive in identifying these situations. But in either case explore all alternative accommodations that may be available. See §4.16.
- Do not assume you know what is needed for someone requesting accommodation. It is patronizing, and you may not have enough knowledge or experience to be correct. For example, not all persons with mobility impairments need or can use the same accommodation you granted to the last person who used a wheelchair. Similarly, not all persons who are deaf or blind can use an assistive listening device. The law requires the accommodation to be effective and tailored to an individual's need.
- Do not assume that someone who has no visible disability does not have a disabling condition. There are "hidden" disabilities that require different types of accommodations. It is inappropriate to assume someone with a hidden disability should be required to provide "medical" proof. It is also not appropriate to require a person with a disability to go to the expense and some physical struggle to obtain a medical opinion or report unless no less expensive or intrusive means to corroborate the disability is available.
- Be patient. Just as the courts are sometimes unfamiliar with the ADA and [Cal Rules of Ct 1.100](#), so are persons with disabilities. Some individuals with disabilities do not know how to present these issues to a court, in part because they have rarely been in court, like most other court users.
- Listen and ask questions, and then listen again.

G. [§4.14] WHEN SHOULD YOU OR WHEN MUST YOU GRANT AN ACCOMMODATION?

In determining whether to grant an accommodation and what accommodation to grant, you must consider, but you are not limited by, the provisions of the ADA and related state and federal laws. [Cal Rules of Ct 1.100\(e\)\(1\)](#). You may deny an application only if you find any of the following ([Cal Rules of Ct 1.100\(f\)](#)):

- The applicant has failed to satisfy the requirements of [Cal Rules of Ct 1.100](#);
- The requested accommodation would create an undue financial or administrative burden on the court; or

TIP: Even if a burden is established, you must consider whether another accommodation could be provided that will not create a burden. See [28 CFR §35.150\(a\)\(3\)](#) (courts are required to provide as much accommodation as they can).

- The requested accommodation would fundamentally alter the nature of the service, program, or activity.

You must inform the applicant in writing—and, as may be appropriate, in an alternative format—that the request is granted or denied, in whole or in part. [Cal Rules of Ct 1.100\(e\)\(2\)](#). If the request is granted, the court must inform the applicant of the accommodation that will be provided and for how long, or that an alternative accommodation will be granted. [Cal Rules of Ct 1.100\(e\)\(2\)](#). If the request is denied, the court must inform the applicant of the reason. [Cal Rules of Ct 1.100\(e\)\(2\)](#); see also [28 CFR §§35.150\(a\)\(3\), 35.164](#).

The Judicial Council Form, Request for Accommodations (MC-410), includes a space on the form for your response, and you must provide specific reasons explaining why an accommodation is denied.

It was error for an ADA coordinator judge to deny a request for a continuance based on an ADA accommodation when none of the three grounds in [Cal Rules of Ct 1.100\(f\)](#) were satisfied. *In re Marriage of James M.C. and Christine J.C.* (2007) 158 CA4th 1261, 1276–1277, 70 CR3d 715. The ADA coordinator should not have deferred to the trial judge in making the determination because even though the issue was phrased as a request for a continuance, it was essentially an application for an ADA accommodation, and the ADA coordinator may deny such requests only if he or she finds one of the three grounds listed in [Cal Rules of Ct 1.100\(f\)](#). See *In re Marriage of James M.C. and Christine J.C.*, *supra*, 158 CA4th at 1274.

An applicant whose request has been granted or denied by a judicial officer may seek review of the determination within 10 days of the date of notice of the grant or denial by filing a petition for extraordinary relief with the appellate court. [Cal Rules of Ct 1.100\(g\)\(2\)](#). An applicant whose request has been granted or denied by any other court employee may seek review of the determination within 10 days of the date of notice of the grant or denial by submitting a request for review to the judicial officer who will preside over the proceeding or to the presiding judge if the matter has not been assigned. [Cal Rules of Ct 1.100\(g\)\(1\)](#).

H. **[§4.15] WHAT KIND OF ACCOMMODATION SHOULD BE PROVIDED?**

“Accommodations” means actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities. [Cal Rules of Ct 1.100\(a\)\(3\)](#). Accommodations may include, but are not limited to, the following ([Cal Rules of Ct 1.100\(a\)\(3\)](#)):

- Making reasonable modifications in policies, practices, and procedures;
- Furnishing, at no charge to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, and readers or certified interpreters for persons who are deaf or hard of hearing; and
- Relocating services to accessible facilities or providing services at alternative sites (program accessibility).

State law ([Govt C §§4450–4455](#)) has required generally accessible features since 1969. California standards must meet or exceed those of the ADA. [Govt C §§4450\(c\), 4451\(d\)](#). But if the courthouse cannot be made fully accessible, the court must relocate services or provide services at alternative sites. [Cal Rules of Ct 1.100\(a\)\(3\)](#). Historic facilities have no blanket exemption from ADA compliance unless it can be demonstrated that the accommodation will “destroy the historic significance” of the facility. [42 USC §12204\(c\)](#).

One potential solution under program accessibility is to train court clerks to provide services in alternative ways at alternative sites. See [28 CFR §35.150\(b\)](#) (requiring delivery of services at alternative accessible sites if location is not accessible). Priority must be given to alternatives that provide the most integrated setting. [28 CFR §35.150\(b\)\(1\)](#). For example, the testimony of a witness with a disability may be taken in an accessible room outside the courtroom. Such an accommodation is a type of program accessibility. Testimony may be taken from another courtroom that is accessible, a hospital room, or the witness’s home.

Under federal regulations, courts have a duty to provide auxiliary aids and services to promote communication, which includes providing

qualified interpreters, note takers, readers, assistive communication devices, and technology sufficient to meet the needs of the disabled individual. 28 CFR §35.160(a)–(b). See CC §54.8 (providing assistive listening devices) and discussion at §4.18. The regulations provide that in “determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.” 28 CFR §35.160(b)(2).

Accommodations must address diverse disabilities, which can vary in nature and degree from person to person. Some examples of the type of accommodations that you may provide include the following:

- Changing a court schedule or calendar to accommodate for accessible public transportation, medication schedules, or other time-sensitive needs (*e.g.*, the inability to sit still for long periods or becoming easily fatigued).
- Giving additional time for a litigant with a disability to respond to court deadlines.
- Providing someone to read or help fill out forms for persons with visual, manual dexterity, cognitive, or other disabilities.
- Permitting telephonic hearings for persons who have environmental sensitivities, mobility, or other limitations.
- Providing assistive listening systems, sign language interpreters, oral interpreters, real-time captioning, written material on computer-readable disk, telecommunications devices for the deaf (TDD), or reader services for a deaf or hard-of-hearing person.
- Providing Braille materials or the assistance of a sighted person to describe objects or diagrams for a blind person.
- Providing for a person who is sensitive to chemicals or scents, lighting, air conditioning, or other environmental elements in the court building or in specific rooms.
- Permitting a person with an emotional or other disorder to be accompanied by a trusted advisor, companion, or other assistive personnel.

The court, not the individual with a disability, is responsible for providing the accommodations. A “public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.” 28 CFR §36.160(b)(1). The rationale for this rule is that persons with disabilities should not be required to pay more for access to the courts and court services, programs, and activities, than persons without disabilities. Although not required, all courts should have a list of qualified interpreters

and readers for persons who are deaf or blind. Technological equipment should be available, including assistive listening systems, printed matter in Braille, tape recordings, computer disks, real-time captioning, and other enhanced communications methods.

The accommodations by the court must begin on the date indicated in the notice of accommodation and must remain in effect for the period specified in the notice. [Cal Rules of Ct 1.100\(h\)](#). You have the discretion to grant accommodations for an indefinite time period or only for a particular matter or appearance. [Cal Rules of Ct 1.100\(h\)](#). This provision of the rule provides flexibility for the courts and may reduce the need to revisit the same accommodation request. Some witnesses or jurors may need an accommodation for the duration of their testimony or service. Some attorneys who need the same accommodation at all times and practice frequently before the court may need a permanent accommodation. Judicial Council Form MC-410 has space to indicate the date or date the accommodation is needed and for the granting of an indefinite accommodation.

TIP: Consider suggesting that your court begin compiling information and create a database of accommodation requests and their disposition. Keeping a good record of accommodations and dispositions could help provide consistency within the court when new requests for accommodation are submitted and eventually could result in a state-wide database, which would improve consistency of accommodation practices between different courts. Also, [CC §54.8](#) requires courts to maintain records of usage of assistance listening systems. Any database created, however, should not include the identity of or other identifying information about any applicants.

I. [\[§4.16\]](#) CAN YOU SUGGEST ALTERNATIVE ACCOMMODATIONS TO THOSE REQUESTED?

The law and regulations do not prohibit courts from suggesting other means of accommodation to the applicant as alternatives to the requested means, but these alternative means must be equally effective as the requested accommodation. For example, if a juror is blind and requests written material introduced at trial to be transcribed in Braille, you may also consider whether providing a reader or tape-recorded transcripts of the written material, as an alternative, would be effective. Similarly, providing an applicant who is hearing or speech impaired with a pad and pencil may be an equally effective communication aid as providing the applicant with a sign language interpreter.

If you are considering approving a partial or alternative accommodation, you may ask the applicant informally if he or she will accept this accommodation. If so, you may ask if the applicant will stipulate to amend the request for accommodation to set forth this alternative accommodation, for which you will then enter an order approving the application.

J. [§4.17] CAN YOU COMMUNICATE WITH THE APPLICANT?

California Rules of Ct 1.100(d) permits ex parte communication, but only for the purpose of the request for accommodation. The subject matter or merits of the proceedings before the court may not be addressed. Cal Rules of Ct 1.100(d). The rule requires that the court, usually the ADA coordinator, and the requestor engage in an interactive process to ensure that the accommodation request is effectively addressed.

IV. [§4.18] WHEN DO YOU APPOINT AN INTERPRETER FOR A DEAF OR HARD-OF-HEARING PARTY OR WITNESS?

First determine whether the party or witness who is deaf or hard of hearing can participate in the proceedings through the use of an assistive listening device or computer-aided transcription equipment. See CC §54.8; Evid C §754(a). If these devices are not sufficient to allow the party or witness to participate in the proceedings, you must appoint a qualified interpreter. Evid C §754(b). A qualified interpreter is an interpreter who has been certified as competent to interpret court proceedings by an entity approved by the Judicial Council. Evid C §754(f), (h); Cal Rules of Ct 2.892. The qualified interpreter may be an oral interpreter, a sign language interpreter, or an interpreter for the deaf-blind, depending on the needs of the individual who is deaf or hard of hearing. Evid C §754(d).

TIP: Be aware that there is no provision in the code for using a noncertified or a generally certified interpreter. The Judicial Council has determined that a qualified ASL interpreter is one who holds a “Specialist Certificate: Legal” issued by the Registry of Interpreters for the Deaf (RID) or “Legal Interpreting Certificate” issued by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH). More information and Web site links may be found at the Court Interpreters Advisory Panel Web site: <http://www.courtinfo.ca.gov/programs/courtinterpreters/>.

If a qualified interpreter is required, the proceedings may not begin until the interpreter is in full view of and spatially situated to ensure proper communication with the individual who is deaf or hard of hearing. Evid C §754(n).

TIP: You should consider whether one interpreter is enough. If the proceeding is longer than 1.5 hours or is likely to last more than 1.5 hours you should have a team of interpreters in place throughout the entire proceeding.

As with all interpreters, a qualified interpreter for the deaf or hard of hearing must take an oath that he or she will make a true interpretation to the witness and a true interpretation of the witness's answers with his or her best skill and judgment. [Evid C §751\(a\)](#). The interpreter must advise you whenever he or she is unable to comply with this oath. [Evid C §751\(b\)](#).

If the appointed interpreter is not familiar with the use of particular signs by the individual who is deaf or hard of hearing, the court must, in consultation with the individual or his or her representative, appoint an intermediary or relay interpreter. [Evid C §754\(e\), \(g\)](#). This can arise when the deaf or hard-of-hearing person has impaired mental capacity, is a child who does not have complete ASL skills, or is a foreign-born and uses a foreign sign language. If an otherwise valid privilege exists between an individual who is deaf or hard of hearing and another person, that privilege is not waived by use of an interpreter to facilitate their communication. [Evid C §754.5](#).

The court must pay the interpreter actual travel costs and the prevailing rate paid to persons employed by the court to provide other interpreter services unless the interpreter's service is part of his or her regular duties as a state, county, or local government employee. [Evid C §754\(i\)](#). Each court must maintain a current roster of qualified, certified interpreters. [Evid C §754\(o\)](#).

V. [§4.19] IS A JUROR AUTOMATICALLY INELIGIBLE FOR SERVICE BECAUSE OF A DISABILITY?

A person is not ineligible to serve as a juror solely because of a loss of sight or hearing or any other disability that impairs the person's mobility or ability to communicate. [CCP §203\(a\)\(6\)](#). Such a person may be excused from jury service, however, on the ground of undue hardship (see [Cal Rules of Ct 2.1008\(d\)\(5\)](#)), or may be excused for cause if you are satisfied that the person is incapable of performing the duties of a juror (see [CCP §§225\(b\)\(1\)\(A\), 228](#)).

VI. [§4.20] WHAT HELP CAN BE GIVEN TO JURORS WITH DISABILITIES?

Often a potential juror with a disability will explain what he or she needs in order to serve as a juror. Alternatively, you or the attorneys, as part of the voir dire process, may ask the potential juror what is needed.

You must appoint a service provider, if needed, to facilitate the communication or participation of a juror who is deaf, hard of hearing, blind, visually impaired, or speech impaired. [CCP §224\(c\)](#). If the parties do not peremptorily challenge a person with a disability, the parties must stipulate to the presence of the service provider in the jury room during deliberations and prepare and deliver to the court proposed jury instructions to the service provider. [CCP §224\(a\)](#). The term “service provider” includes, but is not limited to, a person who is a sign language interpreter, oral interpreter, interpreter for the deaf-blind, reader, or speech interpreter. [CCP §224\(b\)](#). A sign language interpreter, oral interpreter, or interpreter for the deaf-blind must be a “qualified interpreter” under [Evid C §754\(f\)](#). Service providers appointed by the judge are entitled to be compensated by the county as provided in [Evid C §754\(i\)](#). [CCP §224\(c\)](#). The service provider must take an oath that he or she will make a true interpretation with his or her best skill and judgment. [Evid C §751\(a\)–\(b\)](#).

You should emphasize to the examining attorney the need to proceed slowly enough for all questions and answers to be properly transmitted. The jurors—other than the juror who is deaf or hard of hearing—should be advised to keep their eyes on the witness instead of watching the interpreter. Consider seating the interpreter next to or slightly behind the witness so that a juror who is deaf may observe both the witness and the interpreter.

You must instruct the jury and the service provider that the service provider may not participate in the jury’s deliberations in any manner except to facilitate communication between the disabled juror and the other jurors. [CCP §224\(b\)](#). You might give the following instructions to the jurors:

[Name of juror] has been assisted by [a/an] [insert type of service provider] to communicate and receive information. The [service provider] will be with you during your deliberations. You may not discuss the case with the [service provider] or in any way involve the [service provider] in your deliberations. The [service provider] is not a member of the jury and is not to participate in the deliberations in any way other than as necessary to provide the service to [name of juror]. [CACI 5004](#).

You might give the following instruction to the service provider:

You are allowed to be present in the jury room with the jury in this case during deliberations, but only for the purpose of facilitating communication for [name of juror] with the other jurors in this case. You may not discuss the case with any of the jurors, including [name of juror], or otherwise participate in the jury deliberations. You may not make any statements in

the jury room, except as related to facilitating communication between [name of juror] and the other jurors. CCP §224(a)(2).

TIP: Because jury instructions are typically read by the court at a much faster pace than normal speech, consider giving the interpreter an advance copy of the jury instructions.

On request, the court must provide any hearing impaired juror with an assistive listening system or a computer-aided transcription system. [CC §54.8\(a\)](#). The proceedings may not begin until the system is in place and functioning. [CC §54.8\(i\)](#). On the juror's request, the jury deliberation room must also be equipped with such a system for the juror's use. [CC §54.8\(g\)](#). A court reporter may be present in the jury room during deliberations to operate a computer-aided transcription system for a juror who is hearing impaired. [CC §54.8\(h\)](#).

VII. [§4.21] WHAT ETHICAL OBLIGATIONS APPLY WITH RESPECT TO PERSONS WITH DISABILITIES?

In all courtroom proceedings, you must refrain from engaging in conduct yourself and prohibit others from engaging in conduct that exhibits bias based on disability, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants. [Cal Rules of Ct, Standards of J Admin 10.20\(a\)\(2\)](#). The Code of Judicial Ethics requires you to prohibit attorneys in proceedings before you from manifesting, by words or conduct, bias or prejudice based on disability against parties, witnesses, counsel, or others. [Cal Rules of Ct, Code of Judicial Ethics, Canon 3\(B\)\(6\)](#).

VIII. [§4.22] WHAT ARE THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR PROVIDING LANGUAGE ASSISTANCE?

You must appoint an interpreter if, after an examination of a party or witness, you conclude that ([Cal Const art I, §14](#); [Evid C §752\(a\)](#); [Cal Rules of Ct, Standards of J Admin 2.10\(a\)](#)):

- The party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or
- The witness cannot speak English so as to be understood directly by counsel, court, and jury.

CAUTION: Although court interpreters may be needed for criminal, juvenile, family, and civil cases, statutory authority for courts to pay for the use of interpreters is limited to criminal actions and juvenile court proceedings under [Evid C §731\(a\)](#). In family law proceedings the fees of an interpreter must be waived for a party who needs an interpreter and appears in forma pauperis. [Evid C §755\(b\)](#). Note also that [CCP §116.550](#) requires small claims courts to make a reasonable effort to maintain a list of interpreters willing to interpret in small claims actions for no fee or a reasonable fee considering the nature and complexity of the actions.

According to the 2001 Judicial Council Report to the Legislature on the Use of Interpreters in the California Courts, the need for interpreters in court proceedings is on the rise. The top languages in order of usage in the courts are:

- Spanish
- Vietnamese
- Korean
- Armenian
- Cantonese
- Farsi-Persian
- Tagalog
- Cambodian
- Laotian
- Russian
- Mandarin
- Arabic
- Hmong
- Japanese

All counties reported using Spanish language interpreters. Counties also reported using interpreters for more than 75 languages other than the 14 listed above.

A. [§4.23] HOW DO YOU DETERMINE IF AN INTERPRETER IS NEEDED?

You should conduct an examination on the record to determine whether an interpreter is needed on the request of a party or attorney, or if it appears either that a party's or witness's primary language is a language

other than English, or that a party or witness may not speak and understand English sufficiently to participate fully in the proceedings. [Cal Rules of Ct, Standards of J Admin 2.10\(b\)](#). Your examination of the party or witness should normally include questions on the following ([Cal Rules of Ct, Standards of J Admin 2.10\(c\)](#)):

- Identification, *e.g.*, name, address, birth date, age, and place of birth.
- Personal information using vernacular English, with questions phrased to avoid “yes” or “no” replies, for example:
 - How did you come to the court today?
 - What kind of work do you do?
 - Where did you go to school?
 - What was the highest grade you completed?
 - Describe what you see in the courtroom.
 - What have you eaten today?
- The court proceedings, *e.g.*, the type of case before the court, the purpose of the proceedings and function of the court, the rights of a party, and the responsibilities of a witness.

After the examination, you should state your conclusion on the record. The case file should be clearly marked to ensure that an interpreter will be present when needed in the proceedings. [Cal Rules of Ct, Standards of J Admin 2.10\(d\)](#).

1. [§4.24] Must a Certified Interpreter Always Be Used?

You must use a certified interpreter for any language designated by the Judicial Council (*i.e.*, Arabic, Cantonese, Japanese, Korean, Portuguese, Spanish, Tagalog, Vietnamese, Armenian, Mandarin, Khmer, Punjabi, and Russian) unless good cause is shown for why a certified interpreter is not available. [Govt C §§68561\(a\), 68562\(a\), 68566](#). Good cause may be established by a showing on the record that no certified interpreters are available. See [Govt C §68561\(c\)](#). Such a showing may be made by establishing that a diligent search was made for a certified interpreter. A diligent search might include, but is not limited to, asking staff to review the Master List of Certified Court Interpreters of Designated Languages and Registered Interpreters of Nondesignated Languages (see Form IN-120). This resource is available online at <http://www.courtinfo.ca.gov/programs/courtinterpreters/master.htm>. In some trial courts, the responsibility of providing a diligent search is not left to the individual court, but to the trial court Interpreter Services Office. If you are in such a court, you should consult that office about any issues regarding whether a diligent search was made.

Certified interpreters are not available for nondesignated languages, but interpreters for those languages may be registered interpreters. [Govt C §68561\(d\)](#).

2. [§4.25] What Is the Difference Between Certified and Registered Interpreters?

Certified interpreters are interpreters of a designated language who have passed a state-approved certification exam for court interpreters in that language, registered with the Judicial Council, attended an ethics workshop, and submitted proof of attendance at continuing education programs and regular assignments.

Registered interpreters are court interpreters of nondesignated languages who pass an English proficiency exam, register with the Judicial Council, attend a Judicial Council Orientation Workshop, and meet the same continuing education and regular assignment requirements as certified interpreters.

TIP: When confronted with a need for interpreters of nondesignated languages, you should attempt first to get a registered interpreter. Although the screening is not as rigorous as it is for certified interpreters, passing the English language exam and providing proof of continuing education and regular work assignments provide a better assurance of quality than can be obtained otherwise.

3. [§4.26] What Process Do You Follow If You Must Use a Noncertified Interpreter?

If good cause is found, noncertified interpreters may be used in certain instances. [Govt C §68561\(c\)](#). Noncertified interpreters must be used for nondesignated languages because there are no certified interpreters. See [Govt C §68561\(d\)](#).

For criminal cases and juvenile law cases under [Welf & I C §602 et seq.](#), there is a specific rule of court that outlines the process for using noncertified interpreters for designated languages. [Cal Rules of Ct 2.893](#).

TIP: This process, although not required, may be used as a model for cases other than criminal and juvenile and to qualify interpreters of nondesignated languages.

Under [Cal Rules of Ct 2.893](#), an interpreter who is not certified by the Judicial Council to interpret a language designated by the Judicial Council may be appointed in a proceeding if ([Cal Rules of Ct 2.893\(b\)\(1\)](#))

- The presiding judge of the court, or other judicial officer designated by the presiding judge
 - finds the noncertified interpreter to be provisionally qualified following the Procedures and Guidelines To Appoint a Noncertified Interpreter in Criminal and Juvenile Delinquency Proceedings (Form IN-100), and
 - signs an order allowing the interpreter to be considered for appointment (Qualifications of a Noncertified Interpreter (Form IN-110)); and
- You as the judge in the proceeding find on the record that good cause exists to appoint the noncertified interpreter and that the interpreter is qualified to interpret the proceeding (see Forms IN-100, IN-110, and IN-120).

To prevent burdensome delay or in other unusual circumstances, at the request of the defendant, or the minor in a juvenile delinquency proceeding, you may appoint a noncertified interpreter who is not provisionally qualified to interpret a brief, routine matter provided you, on the record ([Cal Rules of Ct 2.893\(b\)\(2\)\(A\)](#)).

- Indicate that the defendant or minor has waived the appointment of a certified interpreter and the appointment of an interpreter found provisionally qualified,
- Find that good cause exists to appoint an interpreter who is neither certified nor provisionally qualified, and
- Find that the interpreter is qualified to interpret that proceeding.

The appointment of a noncertified interpreter who is not provisionally qualified may not be extended to subsequent proceedings without an additional waiver, findings, and appointment. [Cal Rules of Ct 2.893\(b\)\(2\)\(B\)](#). And even provisionally qualified interpreters are subject to limited use of two six-month periods for Spanish interpreters in counties with populations exceeding 80,000 and four six-month periods for other counties. You may, however, extend these periods on a case-by-case basis if you make a specific finding on the record in each instance in which the interpreter is sworn that good cause exists to appoint the interpreter even though he or she has not become certified during the period allowed by provisional certification. [Cal Rules of Ct 2.893\(c\)](#).

When using a noncertified interpreter you must obtain a waiver from the defendant or minor. You must inform the defendant, or the minor in a juvenile delinquency proceeding, that

- The proposed interpreter is not certified,
- The court has found good cause to appoint a noncertified interpreter, and

- The court has found the proposed interpreter to be qualified to interpret in the proceeding.

If the defendant or minor objects to the appointment of the proposed interpreter or waives the appointment of a certified interpreter, the objection or waiver is on the record. [Cal Rules of Ct 2.893\(d\)](#).

The minute order or docket must record for each noncertified interpreter ([Cal Rules of Ct 2.893\(e\)\(2\)](#)):

- The name of the interpreter.
- The language to be interpreted.
- The fact that the interpreter was administered the interpreter's oath.
- The fact that the interpreter is not certified to interpret in the language to be interpreted.
- Whether a Certification of Unavailability of Certified Interpreters (Form IN-120) for the language to be interpreted is on file with the court administrator.
- The court's finding that good cause exists for the court to appoint a noncertified interpreter.
- The court's finding that the interpreter is qualified to interpret in the proceeding.
- If applicable, the court's finding that good cause exists for the court to appoint a noncertified interpreter beyond the time allowed for provisionally certified interpreters.
- If applicable, the objection or waiver of the defendant or minor.
- Judicial Council Form INT-200, which sets out an interpreter's duties in civil and small claims cases, should be furnished to an appointed nonqualified interpreter.

The Court must report the use of noncertified court interpreters to the Judicial Council on Form INT-1 and INT-2.

4. [§4.27] Does an Interpreter Need To Be Sworn in at Every Proceeding?

An interpreter must take an oath that he or she will make a true interpretation to the witness in a language the witness understands and a true interpretation of the witness's answers to questions to the attorneys, the judge, and the jury, in the English language, with his or her best skill and judgment. [Evid C §751\(a\)](#). An interpreter regularly employed by the court, and certified or registered under [Govt C §§68560–68566](#), may file such an oath with the court clerk. This filed oath may serve for all subsequent proceedings until the court revokes the interpreter's appointment. [Evid C §751\(d\)](#). In a proceeding in which a deaf or hard-of-hearing

individual is testifying, the interpreter must advise the court if he or she is unable to comply with this oath. [Evid C §751\(b\)](#).

5. [§4.28] Does an Interpreter Need To Be Identified for the Record?

Yes, an interpreter must be identified for the record. [Evid C §752\(b\)](#).

6. [§4.29] What Must Be Shown in Docket or Minute Order When Certified Interpreter Is Appointed?

The minute order or docket must record the following information for each proceeding requiring the appointment of a certified interpreter ([Cal Rules of Ct 2.893\(e\)\(1\)](#)):

- The name of the interpreter;
- The language to be interpreted;
- The fact that the interpreter is certified to interpret in the language to be interpreted; and
- Whether the interpreter was administered the interpreter's oath or has an oath on file with the court (only certified interpreters may have an oath on file).

B. [§4.30] WHAT REQUIREMENTS MUST INTERPRETERS MEET?

[California Rules of Ct 2.890](#) sets forth various requirements imposed on interpreters, including the following:

- An interpreter must accurately and completely represent his or her certification, training, and relevant experience. [Cal Rules of Ct 2.890\(a\)](#).
- An interpreter must use his or her best skills and judgment to interpret accurately without embellishing, omitting, or editing. [Cal Rules of Ct 2.890\(b\)](#).
- When interpreting for a party, an interpreter must interpret everything that is said during the entire proceedings. [Cal Rules of Ct 2.890\(b\)](#).
- When interpreting for a witness, an interpreter must interpret everything that is said during the witness's testimony. [Cal Rules of Ct 2.890\(b\)](#).
- An interpreter must be impartial and unbiased and must refrain from conduct that may give an appearance of bias. [Cal Rules of Ct 2.890\(c\)\(1\)](#).
- An interpreter must disclose to the judges and all parties any actual or apparent conflict of interest. Any condition that interferes with

the objectivity of an interpreter is a conflict of interest. A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action or if the interpreter has an interest in the outcome of the case. [Cal Rules of Ct 2.890\(c\)\(2\)](#).

- An interpreter must not engage in conduct creating the appearance of bias, prejudice, or partiality. [Cal Rules of Ct 2.890\(c\)\(3\)](#).
- An interpreter must not make statements to any person about the merits of the case until the litigation has concluded. [Cal Rules of Ct 2.890\(c\)\(4\)](#).
- An interpreter must not disclose privileged communications between attorney and client. [Cal Rules of Ct 2.890\(d\)](#); see also [Evid C §754.5](#).
- An interpreter must not give legal advice to parties and witnesses, nor recommend a specific attorney or law firm. [Cal Rules of Ct 2.890\(e\)](#).
- An interpreter must maintain an impartial, professional relationship with all court officers, attorneys, jurors, parties, and witnesses. [Cal Rules of Ct 2.890\(f\)](#).
- An interpreter must convey to the court immediately any reservation about his or her ability to satisfactorily interpret for a party or witness. [Cal Rules of Ct 2.890\(h\)](#); see also [Evid C §751\(b\)](#).
- An interpreter must report to the court immediately any effort to impede his or her compliance with the law, [Cal Rules of Ct 2.890](#), or any other official policy governing court interpreting and legal translating. [Cal Rules of Ct 2.890\(i\)](#).

Other than the requirements noted above, interpreting in a court setting requires an unusually high oral comprehension of two languages, and specific cognitive and motor skills that allow the interpreter to orally render what is heard in one language into the same message in another language, without additions, deletions, or changes in speech style. This language skill must be able to be applied in speech contexts that range from casual, colloquial, or uneducated styles, to speech that is highly formal, technical, and grammatically complex.

The court interpreter has a two-fold duty to the court:

1. To ensure that the official record of the proceedings in English reflects precisely what was stated in another language by a non-English-speaking witness or defendant.
2. To place non-English-speaking participants in legal proceedings on an equal footing with those who understand English.

C. [§4.31] SHOULD YOU AUTHORIZE A PREAPPEARANCE INTERVIEW WITH AN INTERPRETER?

For good cause, you may authorize a preappearance interview between the interpreter and the party or witness. [Cal Rules of Ct, Standards of J Admin 2.10\(e\)](#). Good cause exists if the interpreter needs clarification of any interpreting issues, including colloquialisms, culturalisms, dialects, idioms, linguistic capabilities and traits, regionalisms, register, slang, speech patterns, or technical terms. [Cal Rules of Ct, Standards of J Admin 2.10\(e\)](#). The attorneys may attend the interview. [Cal Rules of Ct, Standards of J Admin 2.11\(a\)\(12\)](#).

During the preappearance interview with a non-English-speaking party, give the following explanation regarding the procedure to be used when the non-English-speaking party is not testifying ([Cal Rules of Ct, Standards of J Admin 2.11\(a\)\(14\)](#)):

- The interpreter will interpret all statements made in open court.
- The party must direct any questions to counsel. The interpreter will interpret all questions to counsel and the responses. The party may not seek advice from or engage in discussion with the interpreter.

TIP: A preappearance interview may be helpful in determining whether an intermediary or relay interpreter is needed for a deaf party or witness.

D. [§4.32] WHAT INSTRUCTIONS SHOULD YOU GIVE THE INTERPRETER, ATTORNEYS, AND WITNESS?

[California Rules of Ct, Standards of J Admin 2.11\(a\)\(1\)–\(11\)](#) set forth various instructions that you should give to an interpreter, either orally or in writing. [Standard 2.11\(b\)](#) sets forth various instructions for the attorneys and [Cal Rules of Ct, Standards of J Admin 2.11\(a\)\(13\)](#) sets forth various instructions for witnesses.

E. [§4.33] HOW CAN YOU EXAMINE JURORS FOR POSSIBLE LANGUAGE BIAS?

If one of the parties requires an interpreter, you may want to examine the prospective jurors about any possible language bias. For example:

[Plaintiff's/Defendant's] first language is Spanish. Therefore, an interpreter has been provided by the court. Does this bother or offend you in any way?

Will the fact that an interpreter is provided in this proceeding affect your decision on the evidence?

Can you use the same standard to evaluate the credibility of a witness regardless of which language the witness speaks?

Do any jurors understand Spanish?

[If the answer is yes]

Do you promise to listen to the interpreter's response and not to interpret on your own?

If there is a problem or difference of opinion regarding proper translation, do you promise to notify the court as soon as possible?

IX. [§4.34] WHAT IS NEEDED TO PROVIDE ACCESS TO THE ECONOMICALLY DISADVANTAGED?

The California Commission on Access to Justice in its 1998 report, *A Call for Equal Access to Civil Justice*, noted that “[j]ust and fair administration of our rule of law requires sufficient courtrooms, fair judges and competent attorneys who are equally accessible to all persons within the society regardless of wealth or other circumstances.” It made various suggestions regarding what is needed to achieve equal access to justice, including the following:

- Increasing statewide funding for legal services to the poor and the courts.
- Developing innovative and less costly delivery of legal services for all Californians, including the expansion of mediation and other alternative dispute resolution methods.
- Expanding the availability of prepaid legal services and preventive law measures.
- Providing user-friendly courts and increasing public education about legal rights and responsibilities.
- Identifying local access-to-justice needs, and generating ideas and solutions to meet these needs. Developing a network of local leaders from business, government, and the private and nonprofit sectors willing to work with the legal community to improve access to equal justice in the local community.

RESOURCES

Access and Fairness Advisory Committee

The Judicial Council's Access and Fairness Advisory Committee is conducting continuing studies on numerous access and fairness issues. Various reports of the committee are available on its Web site:

<http://www.courtinfo.ca.gov/programs/access/>. The committee may also be contacted at 415-865-4200. Among its publications are:

- Disability Fairness: Guidelines for Judicial Officers—Avoiding the Appearance of Bias (2000).
- Disability Etiquette: Interacting With Persons With Disabilities (2000).
- Gender Bias: Guidelines for Judicial Officers—Avoiding the Appearance of Bias (1996).
- Persons With Disabilities: Q & A on Rule of Court 989.3 (1998).
- Q & A on Rule of Court 989.3: Requests for Accommodations by Persons With Disabilities (1997).
- Report on Ethnic and Racial Bias in the Courts (1997)
- Sexual Orientation Fairness in the California Courts (2001)

California Center for Judicial Education and Research (CJER)

The California Center for Judicial Education and Research has various curricula on access and fairness issues, which are available to courts to create their own local trainings. These include

- Beyond Bias: Assuring Fairness in the Courts (1998).
- Fairness in the California Courts (1998).
 - ADA (2000).
 - Judicial Fairness Frontiers: Sexual Orientation (1999).

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